

December 28, 2018

Mr. Daniel R. Staley
DRS and Associates
52 Winters Street
Westminster, Maryland 21157

Re: Mills Property (Jason)
Forest Conservation Variance
Tracking # 03-18-2848

Dear Mr. Staley:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by this Department of Environmental Protection and Sustainability (EPS) on November 7, 2018. This request proposes to critically impact two of the eight specimen trees onsite in developing a three-lot residential subdivision on the 20.6-acre property. The specimen trees to be impacted are northern red oaks in fair condition or better. Impacts are attributed to the creation of septic reserve areas and the installation of a driveway that will serve the two proposed dwellings. The third lot will contain the existing residence and the vast majority of Forest Buffer Easement, Forest Conservation Easement, and Forest Buffer & Forest Conservation Easement. Offsetting mitigation for loss of the specimen trees is being provided in accordance with an approved forest conservation plan and worksheet, as these specimens are in existing forest.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of beneficial use of his property. We acknowledge that there is an existing dwelling onsite and that a two-lot rather than three-lot subdivision could be developed without impacting any of the specimen trees. While this would not realize the maximum development potential of the

property, beneficial use would be obtained nonetheless. Therefore, full application of the law to the entire property would not deprive the petitioner of all beneficial use of the property. Consequently, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. We find that rather than general conditions of the neighborhood, the petitioner's plight is largely due to the number and location of specimen trees across the portion of the property outside of the Forest Buffer Easement. Therefore, the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The granting of this special variance will not alter the essential character of the surrounding neighborhood, as the proposed minor subdivision is situated within an area of large residential lots, and its housing density and style is commensurate with the neighboring properties. Furthermore, approximately 16.4 acres of the 20.6-acre property will be placed in various resource protection easements that along with forest to remain outside of these easements, will help screen the proposed dwellings from surrounding residences. Consequently, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. In addition to the Forest Conservation Law, this development project must also comply with the Law for the Protection of Water Quality, Streams, Wetlands and Floodplains, which will entail recordation of various Forest Buffer Easements and associated Declaration of Protective Covenants. Moreover, none of the specimen trees to be removed are in any Forest Buffer Easement. Therefore, we find that granting of the special variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The request is based solely on the fact that the specimen trees are clustered along both the existing driveway and the buildable lot areas. Furthermore, the petitioner has not taken any actions on the property necessitating this variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Allowing impacts to two of the eight specimen trees on this residential property for the creation of three residential lots would be consistent with the spirit and intent of the law. This is especially true when

considering that impacts to forest and specimen tree will be mitigated, that the remaining specimen trees will be adequately protected during and after construction, and that approximately 16.4 acres of the 20.6-acre (79.6 %) of the property will be placed in protective easement. Therefore, we find that this criterion has been met.

Based on our review, this Department finds that all required criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. Blaze orange high visibility fence shall be installed along the limit of disturbance (LOD) wherever the LOD is within 50 feet of any specimen tree to remain, Forest Conservation Easement, or Forest Buffer & Forest Conservation Easement. This protective fence shall be illustrated on the plan view and its installation included in the sequence of operations on any sediment control plan and the final forest conservation plan (FCP). Installation of this fence shall be inspected and approved by EPS staff prior to issuance of any grading or building permit.
2. The outer limit of the Forest Buffer Easement, Forest Conservation Easements or Forest Buffer & Forest Conservation Easements shall be permanently posted at 100-foot intervals or at any turning point with "Forest Buffer-Do Not Disturb" and "Forest Conservation-Do Not Disturb" signs in accordance with an approved FCP. The signs are available from private sign contractors and must be installed prior to issuance of any permits for the project or by June 1, 2019, whichever comes first. Information regarding these signs is enclosed.
3. The following notes must appear on all subsequent plans for this project:
 - "A special variance was granted on December 28, 2018 to Baltimore County's Forest Conservation Law to allow the removal of two specimen trees onsite. Conditions were placed on this variance, including establishing Forest Conservation Easements and protecting the remaining specimen trees onsite."
 - "A special variance to Baltimore County's Forest Conservation Law may be required for future removal of any specimen trees within this property."
4. A final FCP mylar addressing the variance conditions above as well as the requirements of Section 33-3-106(c) of the Baltimore County Code must be submitted to EPS and approved prior to minor subdivision plan approval.
5. This variance approval does not exempt future development activities at this site, including additional specimen tree impacts, from compliance with Baltimore County's Forest Conservation Law.

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It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the property owner sign the statement below and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please call Michael S. Kulis at (410) 887-3980.

Sincerely yours,

David V. Lykens,
Acting Director

DVL/msk

Enclosure

c. Marian Honeczy, Maryland DNR

I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

Property Owner's Signature

Date

Property Owner's Printed Name